IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929

OP.No. 13071 of 1999(S)

AGAINST THE ORDER IN RA 3/COCH/1997 IN
ITA.93/COCH/91/1991 of INCOME TAX APPELLATE TRIBUNAL,
COCHIN BENCH

.....

PETITIONER:

THE COMMISSIONER OF INCOME TAX, TRIVANDRUM.

BY STANDING COUNSEL, GOVERNMENT OF INDIA)TAXES)
SRI.P.K.RAVINDRANATHA MENON (SR.)
SRI.GEORGE K. GEORGE

RESPONDENT:

M/S. STANDARD CASHEW INDUSTRIES, KOLLAM.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 26/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

O.P.No.13071 of 1999-S

Dated, this the 265h day of July, 2007

JUDGMENT

H.L. DATTU, CJ.

This is a petition filed by the Revenue under section 256(2) of the Income Tax Act, 1961, hereinafter for the sake of brevity referred to as the Act.

2. The assessee was before the Income Tax Appellate Tribunal, Cochin Bench in I.T.A. No.93/1991 for the assessment year 1984-85. The Tribunal has allowed the assessee's appeal and thereby has set aside the orders passed by the Commissioner of Income-tax (Appeals), Trivandrum, dated 28.11.1990.

3. The Revenue had filed an application under section 256(1) of the Income Tax Act inter alia requesting the Tribunal to state the case and refer the questions of law for consideration and decision of this court. The Tribunal has rejected the said application/petition. That is how the Revenue is before us in this petition filed under section 256(2) of the Act.

4. The Revenue has raised the following questions of law. They are as under:

> 1. Whether, on the facts and in the circumstances of the case, and also for the reasons given by the CIT (A) in his order, the Tribunal is right in law and fact in holding that “the assessing officer again included the value of containers in estimating the value of Rs.14/- per pound”; “than there is an addition of the value containers twice” and are not the findings wrong, unsupported by materials and based on surmises?
> 2. Whether, on the facts and in the circumstances of the case, and in the additional ground (vide paragraph 6 of the order of the Tribunal) raised, the assessee himself claims driage only at 5%,

the Tribunal is justified in allowing driage at 7½% with reference to grounds 2 and 4 in paragraph 5 of its order?

3. Whether, on the facts and in the circumstances of the case, and when the Tribunal itself finds “the above figure appears to have been worked out before allowing the driage” and in the absence of “any further details in support of his claim (vide the finding in paragraph 9 of CIT(A)'s order) the Tribunal is right in law and fact in working out the unaccounted sales at Rs.7,38,400/- and finding the same “to be quite correct”? and is not the finding of the Tribunal wrong and unreasonable and unsupported by cogent evidence and relevant materials?

4. Whether, on the facts and in the circumstances of the case, and in the light of paragraph 9 of the order of the CIT(A) and in the light of the finding by the CIT(A) that “The appellant's representative has not filed any further details in support of his claim” the ground said to be additional is really an additional ground and the Tribunal is justified in allowing and considering the same as an additional ground?

5. Whether on the facts and in the circumstances of the case,is not the additional ground only a pretext of a ground in view of the consideration of the same by the CIT(A) in paragraph 9 of his order?

6. Whether, on the facts and in the circumstances of the case, is not the order and the consideration of the unaccounted sales and the finding in regard thereto, mostly based on the submissions of the assessee's representative and hence vitiated and wrong?

5. After going through the orders passed by the Tribunal and after perusing the questions of law framed by the Revenue, we are of the opinion that the questions of law raised by the Revenue requires consideration and decision

by this court. Therefore we pass the following:

Order

i) The petition is allowed.

ii) A direction is issued to the Income Tax Appellate Tribunal, Cochin Bench to state the case and refer the questions of law arising out of the order passed in ITA No.93/1991 for the assessment year 1984-85 as expeditiously as possible.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

mt/

H.L. DATTU, C.J. &
K.T.SANKARAN, J.

O.P. 13071 OF 1999-S

JUDGMENT

26.7.2007